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C O N F I D E N T I A L AIT TAIPEI 001289

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SUBJECT: POTENTIAL TAIWAN TIFA DISCUSSION ISSUES

Classified By: AIT Director Stephen Young, Reason 1.4 b

¶1. (C) Summary: With meetings between Deputy USTR Bhatia and Taiwan officials scheduled for the week of May 22, 2006, AIT/T would like to begin engaging with Taiwan trade officials on specific objectives for discussions under our Trade and Investment Framework Agreement (TIFA). In that spirit, we have prepared a list of useful and achievable objectives in intellectual property protection, agricultural market access, telecommunications regulation and market liberalization, pharmaceutical market access, and government procurement for use as a starting point for U.S. government agency discussion. We expect Taiwan's primary objective during these talks will be to secure a U.S. commitment to begin negotiations on a U.S./Taiwan Free Trade Agreement. End Summary.

¶2. (C) Action Request: AIT/T would like to approach Taiwan officials as soon as possible to inform them of specific U.S. priorities for this TIFA round and begin setting expectations. Request concurrence from appropriate Washington agencies. End Action Request.

¶3. (C) Background: In November 2004, AIT/W hosted U.S. and Taiwan officials for the resumption of negotiations under the U.S./Taiwan Trade and Investment Framework Agreement (TIFA). At that meeting, Taiwan officials agreed to language on Taiwan's country specific quotas on rice, discussed apples and beef, clarified plans both to provide data protection for pharmaceuticals and open discussions with pharmaceutical manufacturers on inspections and pricing. The success of this meeting, the first under the TIFA framework since 1998, was the result of long preparation and frequent discussion by both sides about priorities and expectations. AIT/T would like to engage as soon as possible the Taiwan government to set expectations and pave the way for a successful meeting. Priority issues for agency consideration include agricultural market access, intellectual property protection, telecommunications regulation and market liberalization, pharmaceutical market access, and government procurement. We believe progress on these issues is achievable and will offer significant benefits to U.S. trade. Our interlocutors in the Taiwan government are familiar with these concerns and with the appropriate approach could be prepared to make progress. With TIFA meetings fast approaching, it is time now to discuss specific TIFA objectives with Taiwan trade officials.

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Agricultural Trade and Market Access
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14. (C) SPS/TBT ISSUE: Taiwan does not fully adhere to sanitary and phytosanitary (SPS) or Technical Barriers to Trade (TBT) provisions of its WTO accession agreement. Taiwan's persistent use of SPS/TBT measures that are not "least trade restrictive" is grounded in a no-risk concept toward managing animal and plant health risk and food safety.

OBJECTIVE: Change Taiwan's overall approach to SPS related import measures and restrictions. Secure Taiwan's agreement to adopt WTO-consistent SPS/TBT measures that are based on science and are "least trade restrictive."

SPECIFIC CASES/TALKING POINTS: Despite the political interference that delayed the process, Taiwan's review of U.S. beef is actually a positive example of an appropriate regulatory approach. (note: the talking points and context for each of the following examples will need to be developed by our technical and policy people in Washington.)

-- Apples: The APHIS proposal on a modified penalty structure and other changes to the existing Work Plan for apples is awaiting the outcome of an APHIS risk assessment. It is unlikely the TIFA talks will delve into the technical details of a new proposal.

-- BSE-related bans on non-meat products: Taiwan continues to ban the import of items like protein-free tallow, poultry and porcine meal, and to maintain overly restrictive inspection requirements for pet food, ostensibly due to concerns over BSE. Many of these restrictions are contrary to the guidelines established by the OIE, the WTO standard setting body for animal health. We expect Taiwan to remove these restrictions.

15. (C) RICE CSQ ISSUE: Although much progress was made in the previous TIFA on headnote language and subsequent discussions have led to a general agreement on country-specific quotas (CSQ), there is not yet final resolution of this issue and the WTO objection remains in place. Taiwan is concerned Egypt, which is not a party to the WTO objection but has a history of rice exports to Taiwan, will file its own objection to the CSQ. On April 7, USDA and COA tentatively agreed Taiwan would go forward with WTO notification of the new CSQ regime in early May, pending the approval of the COA Vice Minister. If the Vice Minister declines to act, the issue should be at the top of our TIFA agenda. If Taiwan successfully notifies the WTO before TIFA negotiations, this issue can be raised as an example of successful cooperation.

OBJECTIVE: Finalize previous agreements on CSQ, notify the changes to the WTO and lift the US and other parties WTO objections to Taiwan's rice import regime.

TALKING POINTS: (If no action has been taken) Taiwan needs to take a calculated risk and make a decision to accept the agreement worked out among the three parties that filed the WTO objection (the US, Australia, and Thailand). The United States and other parties have little or no leverage on Egypt and, given the Doha discussions, time is running out.

(If Taiwan has successfully notified the WTO) The successful establishment of Taiwan's rice CSQ is an example of what Taiwan can accomplish when it works productively and practically with international partners to resolve trade irritants.

16. (C) AGRICULTURAL TRADE LIBERALIZATION: Taiwan's positions in Doha Round negotiations have been contradictory. While an advocate for positive change in NAMA and GATS negotiations, Taiwan's support for G-10 sponsored restrictions in agricultural trade are an obstacle to successful completion of the Doha Round.

OBJECTIVE: Elicit Taiwan support for successful completion of the Doha Round by distancing themselves from the current G-10 position on agriculture.

Talking point:

-- The successful completion of the Doha Round is essential to efforts to create a more fair global trading system. Time is growing short. Taiwan needs to do more to move the process forward in all areas, including agriculture.

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Intellectual Property Rights Protection
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17. (C) Taiwan has made positive strides in improving the environment for IPR protection by increasing training for judges, prosecutors and law enforcement officials and conducting large numbers of well-publicized raids against pirated trademarked clothing and luxury goods, copyrighted digital media, and counterfeit pharmaceuticals. Taiwan has also had success in prosecuting cases against P2P services and cracking down on internet piracy. The Taiwan Intellectual Property Office (TIPO) has demonstrated the willingness and ability to provide needed training and public education, lobby for necessary legislative changes, and cooperate with industry to resolve problems. But TIPO's resolve is not uniformly reflected elsewhere in the government. In particular, the Ministry of Education (MOE) and the Department of Health (DOH) need to do more to combat intellectual property infringement on campus and sale of counterfeit drugs in licensed pharmacies in Taiwan.

18. (C) UNIVERSITY PIRACY: Copyright holders in Taiwan continue to be victimized by piracy in and around university campuses. Copy shops continue to violate copyrights by photocopying text books. Rightsholders contend MOE-administered ISP TAnet is used for large-scale illegal downloading and file-sharing of copyrighted works.

OBJECTIVES: Secure Ministry of Education commitment to publicly state its commitment to IPR protection and to assign a liaison to work with rightsholders on university-related IPR concerns.

TALKING POINTS:

-- MOE should publicly state its support for IPR protection and encourage universities and schools to establish their own IPR protection procedures.

-- MOE needs to make a commitment to preventing piracy on campus by assigning people in the ministry to serve as IPR coordinators with responsibility for outreach and education to universities and to serve as a liaison with rightsholders.

19. (C) COUNTERFEIT PHARMACEUTICALS: The prevalence of counterfeit pharmaceuticals is a growing concern for pharmaceutical companies and law enforcement in Taiwan. Rightsholders allege as much as 50% of some lifestyle drugs sold in Taiwan are counterfeit. The Department of Health has no oversight of pharmacies and views this as a public-health, not an IPR issue. Because no one has yet reported a serious adverse reaction, DOH has not made combating counterfeits a priority.

OBJECTIVE: Secure DOH commitment to increase its efforts to improve education about the problem of counterfeit pharmaceuticals in Taiwan, to include TIPO in discussions of methods to combat counterfeit pharmaceuticals, and to take steps to improve oversight of pharmacies.

TALKING POINTS:

-- We would like DOH to take measures to improve oversight of pharmacies. This could include commitments to increased surveys, raids and legal action against those selling fakes.

-- DOH needs to improve education about the prevalence and risks of counterfeit pharmaceuticals. This could include

sponsoring an anti-piracy seminar directed at pharmacists or other education campaigns.

¶10. (C) IPR POLICE STAFFING: At the direction of the President, the Ministry of the Interior has shifted officers away from the specialized IPR Police to other public safety related duties. This has left the IPR Police under complement by 40 officers.

OBJECTIVE: Secure the commitment of the Taiwan government to fully staff the IPR Police at 220 officers and to improve equipment and training for use in investigation of internet-related crimes.

Talking point:

-- The IPR Police is an effective force and a potent symbol of Taiwan's seriousness about combating IP crime. MOI should reverse its decision to transfer staff from the IPR Police to other duties and commit to fully staffing, equipping and training this important body.

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Telecommunications Policy and Liberalization

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¶11. (C) Taiwan has made great progress in liberalizing its telecom market. Fixed line licensing has been opened to new entrants into the market and Chunghwa Telecom (CHT) was nominally privatized in August 2005. A National Communications Commission (NCC) has been established and is intended to be an independent regulatory body for broadcast and telecommunications. In spite of these positive steps, Taiwan's telecom policies leave room for improvement. Only one bidder has applied for a fixed line license in Taiwan since the market was liberalized. Analysts suggest this is because Taiwan capital and build-out requirements as well as CHT's control over last mile infrastructure constitute a significant barrier to entry. The foreign ownership limit in the telecom sector is effectively 60%. In November, then Taiwan Premier Hsieh announced a CHT rate cut on the floor of the Legislative Yuan and recent reports suggest the Ministry of Transportation and Communications (MOTC) favors turning over a toll collection project to CHT after a rival mobile phone company's implementation of the project ran into technical and political problems. These examples call into question CHT's independence from government control. The establishment of the NCC was tainted by bitter partisan infighting resulting in the resignation of four of the 13 commissioners. The remaining 9 have little experience in telecommunications and have yet to establish their credibility as an independent regulatory body.

¶12. (C) CHT PRIVATIZATION: Reports since CHT's successful privatization in August 2005 suggest the government continues to play a primary role in the management of the company. This calls into question whether CHT was really privatized and what role the Taiwan government plays in CHT's operations.

OBJECTIVE: Secure the commitment of the Taiwan government to the independence of privatized industry in Taiwan.

Talking point:

-- MOTC should brief the US on the CHT privatization and steps to insulate CHT from government pressure.

¶13. (C) NCC ESTABLISHMENT: The National Communications Commission (NCC) was recently established as an independent telecommunication and broadcast regulator. It will draw its staff from the Government Information Office (previously responsible for broadcast regulation) and the Directorate General of Telecoms (previously responsible for telecom policy and regulation). Commissioners are primarily academics with no experience in media or telecom regulation. The credibility of the NCC was damaged by the intense partisan battle over the nomination of commissioners and the scope of its authority is still under debate.

OBJECTIVE: Better understand the priorities of the newly-established NCC and to explore the possibility for some type of cooperative relationship between the NCC and the U.S. Federal Communications Commission.

Talking point:

-- We would appreciate a better understanding of the NCC's near-term agenda, its willingness to establish a relationship with US FCC officials, and its plans to establish its credibility as a functioning and independent regulatory body, including its views on fixed line licensing, foreign investment, and CHT's control over last mile infrastructure.

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Pharmaceuticals and Market Access for Medical Products
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¶14. (C) Our ability to communicate with the Department of Health (DOH) and the Bureau of National Health Insurance (BNHI) on market access related issues has improved over the past year, leading to amendments to the pharmaceutical law that provided protection for pharmaceutical data in patent and validation applications, new validation procedures and the establishment of a bimonthly dialogue with local representatives of US pharmaceutical manufacturers to share information and discuss industry concerns. However, industry continues to have serious concerns about Taiwan policies that disproportionately affect international research pharmaceutical providers. In particular, industry would like Taiwan's DOH to do more to protect patent rights, adopt more fair and transparent mechanisms for new drug pricing, and reimburse at actual transaction price. Taiwan is also currently considering a bill that would legitimize the practice of chiropractic in Taiwan in accordance with WHO guidelines.

¶15. (C) DE EXPANSION: DOH recently issued regulations to implement Data Exclusivity protection for patented pharmaceuticals and chemicals. Local representatives of U.S. pharmaceutical companies oppose the requirement that products be registered in Taiwan within three years of initial registration to be eligible for DE protection and the process simplifying registration requirements for generic manufacturers. Innovative pharmaceutical manufacturers also call for DOH to protect new indications, to notify the patent-holder when a generic manufacturer applies for registration, and to suspend review of generic applications if the originator institutes legal action against the generic company.

OBJECTIVE: Secure Taiwan's support for the implementation of Data Exclusivity protection for patented pharmaceuticals in a manner that demonstrates DOH's understanding and respect for the importance of intellectual property rights and innovation.

TALKING POINTS:

-- DOH has an important role to play in protecting intellectual property rights. Notifying rightsholders of potential patent infringing drugs and temporarily suspending review of products alleged to infringe patents will encourage innovation and protect consumers.

-- DE should apply to both New Chemical Entities (NCE's) and New Indications. This will encourage innovation.

-- Time limits for product registration are arbitrary and do not further the goal of respect for patent rights and innovation.

--Allowing generic manufacturers to submit simplified applications for new drug approvals discounts the efforts of innovative pharmaceutical producers and favors generic manufacturers.

¶16. (C) PRICE/VOLUME SURVEY: BNHI's yearly Price/Volume Survey is used to reduce prices for pharmaceuticals, in

particular targeting heavily prescribed drugs. Surveys are non-transparent and hospitals and generic manufacturers have incentives to provide inaccurate data. Innovative pharmaceutical companies criticize recent efforts by BNHI to group drugs by therapeutic purpose as unfairly eroding their patent protection.

OBJECTIVE: Encourage BNHI to establish a transparent and effective price review mechanism that does not unfairly target patented drugs.

TALKING POINTS:

-- We support BNHI's right to periodically review reimbursement pricing for drugs but urge it be done in a fair and transparent manner that does not unfairly target patented pharmaceuticals.

-- Price cuts based on therapeutic grouping disadvantages patented products, fails to reward innovation and discourages the use of innovative medicines.

¶17. (C) NEW DRUG PRICING: Taiwan's reimbursement prices for new drugs are significantly below US and EU prices and generics are reimbursed at 90% of the originators reimbursement price. This encourages off-book discounting by generic manufacturers and gives generics an unfair sales advantage. Medical providers are encouraged to over-prescribe generic drugs as a revenue source (aka the Black Hole).

OBJECTIVE: Increase access to new drugs and establish a transparent and fair pricing mechanism for new drugs. Reduce the size of the black hole through appropriate reimbursements and reducing incentives for over-prescribing.

TALKING POINTS:

-- The pricing mechanism used by the National Health Insurance institutionalizes over-prescription and "black hole" pricing.

-- Separation of prescribing and dispensing powers would reduce over-prescription for revenue generation.

-- Reimbursing at actual transaction price (ATP) as required by Taiwan law would help to reduce off-book, black hole funding of the medical system.

-- New drug prices should be based on the average price in A-10 (Advanced 10) countries and OECD countries with similar levels of development.

-- Generic prices should be capped at 60% of originator drug prices. This will reduce the ability of generics to offer off-book discounts.

¶18. (C) BALANCED BILLING: Taiwan has recently discussed amending the law to allow for "reference pricing" and "balanced billing." This amendment would cap reimbursement prices based on approved therapies, but would allow patients to pay the difference to purchase more expensive innovative drugs. This would lead to a two-tier health care system that would effectively deny poorer patients access to the most innovative treatments.

OBJECTIVE: Ensure Taiwan patients have access to the most innovative pharmaceutical products.

TALKING POINTS:

-- Reimbursement at actual transaction price will protect patient's right to innovative treatments.

-- If balanced billing occurs, manufacturers should be given more leeway to set their own prices without a BNHI ceiling and to market directly to consumers.

--To ensure access to innovative pharmaceuticals, a balanced billing system should include provisions to allow for private insurers to support co-payment and prescription costs.

¶19. (C) CHIROPRACTIC SERVICES: Taiwan's Legislative Yuan is currently considering a bill to legalize and regulate the practice of chiropractic medicine. Chiropractors in Taiwan, most of whom are U.S. trained and licensed, face restrictions in their practice and are subject to harassment by the Department of Health because chiropractic medicine is unrecognized in Taiwan law.

OBJECTIVE: Encourage DOH to support legalization of chiropractic services in accordance with WHO guidelines.

Talking point:

-- DOH should consider supporting the proposed chiropractic licensing bill to bring Taiwan into compliance with WHO recommended standards.

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Government Procurement
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¶20. (C) GOVERNMENT PROCUREMENT: Taiwan agreed when it acceded to the WTO in 2002 to join the Agreement on Government Procurement (GPA). Taiwan's entry into that body has been blocked by Chinese concerns about proper nomenclature for Taiwan government entities and the implication for sovereignty implied by GPA membership. We have in the past suggested Taiwan consider signing a bilateral GPA with the US to serve until negotiations in Geneva on this issue are successful. Taiwan has refused to consider this option, preferring to wait for GPA membership. As a result, US businesses complain they are disadvantaged vis--vis local competitors. Taiwan continues to use its failure to accede to the GPA as an excuse for discriminatory treatment of U.S. companies, most recently an legislative amendment requiring government ministries reduce expenditures on Microsoft products by 25%.

OBJECTIVE: Secure Taiwan's commitment to provide GPA treatment for U.S. companies through a bilateral GPA or through Taiwan's decision to unilaterally commit to providing GPA treatment while awaiting approval to join the WTO GPA. Secure commitment from the Executive Yuan that Taiwan will oppose the application of LY recommendations targeting spending cuts that target U.S. companies.

TALKING POINTS:

-- The U.S. remains committed to seeing Taiwan accede to the WTO GPA. However, in the interim we would like Taiwan to provide GPA treatment to U.S. companies.

-- The targeting of U.S. products in legislation requiring reductions in software spending by government ministries is disturbing and inappropriate. We call on the EY to ensure American products are not subject to discriminatory treatment.

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Responding to Taiwan's FTA Agenda
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¶21. (C) Taiwan is likely to raise its interest in an FTA with the U.S., either during the TIFA or in side meetings. AUSTR Stratford has publicly noted that U.S. businesses are not pressing for an FTA with Taiwan, nor has the local AmCham come out in favor of an FTA with Taiwan under current conditions. USTR staff is currently stretched thin supporting FTA negotiations with Korea and Malaysia and Presidential Trade Promotion Authority will expire in June 2007. Taiwan interlocutors tell AIT an FTA is needed to balance Taiwan's increasing reliance on trade with China (China recently became Taiwan's largest trading partner, surpassing the U.S.) However, repeated requests for Taiwan's analysis of costs

and benefits to U.S. or Taiwan businesses have been unfulfilled, suggesting the Taiwan government is motivated to enter FTA negotiations primarily in an attempt to demonstrate its close relationship to the U.S. for domestic political consumption.

¶22. (C) Any FTA would need to target broad Taiwan policies that have a negative impact on trade and be strongly supported by U.S. businesses. For example, an FTA should lead to a complete dismantling of Taiwan's rice trade regime. Since Taiwan's rice import structure touches on so-called sensitive products, excessive tariffs and other issues, open access for rice is a minimum FTA requirement to achieve our overall agricultural market access goals with Taiwan. Taiwan would also need to take politically difficult steps to reduce barriers to U.S. products and services including reform of its health care financing system to eliminate discriminatory treatment of U.S.-manufactured innovative pharmaceuticals, increased commitment to IPR protection, and action to eliminate discriminatory treatment in government procurement. Finally, Taiwan must do more to help the Doha Round reach a satisfactory conclusion.

TALKING POINTS:

-- As a member of the G-10, Taiwan has vocally opposed the U.S. Doha position on agricultural market access and seeks to maintain significant barriers for a large number of sensitive products. We do not believe Taiwan was helpful at the HK negotiations.

-- Taiwan does not have a good track record in solving bilateral agricultural trade disputes.

-- It is not clear there is strong agricultural or business support within the United States for an FTA with Taiwan.

-- Taiwan has not produced compelling economic justification for an FTA with the U.S. nor have we seen any indication that Taiwan authorities are willing to make politically difficult decisions to reform market access requirements.

-- The TIFA remains a valuable tool for reaching agreement on ways to resolve our bilateral trade irritants.

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Getting to Yes
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¶23. (C) Comment: While Taiwan officials have not yet shown a willingness to take bold steps on market liberalization and other U.S. priorities, AIT/T believes it is important for agencies to consider carefully how best to respond in the event Taiwan comes to the TIFA table ready to meet U.S. demands for agricultural market access, improved access for U.S. pharmaceutical products and national treatment in government procurement. If Taiwan is set to demonstrate they have reviewed the economic costs and benefits of an FTA, are able to make an economic argument, and are willing to make needed concessions, we need to be prepared to respond appropriately. End Comment.

YOUNG